

Construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. (This is a GIL).

July 1, 2004

Dear Xxxxx:

This letter is in response to your letter dated April 6, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC is an Illinois corporation. We have been assigned Illinois Department of Revenue Certificate of Registration #.

ABC sells storage rack to end users and, on occasion, using sub-contractors, installs storage racks for the end user. When installing storage racks it is necessary to bolt the uprights of the rack to the floor for stability purposes only. It is not uncommon for these racks to be unassembled, moved or sold as used equipment.

We recently sold and, through the use of a sub-contractor, installed storage rack at XYZ in CITY, Illinois. We invoiced XYZ at the rate of 8.25% based on our selling price of the material.

XYZ is in disagreement with our method of taxing these storage racks. Citing Illinois Private Letter Ruling No. ST-01-0011-PLR 03/28/01, they claim that ABC is a construction contractor and therefore XYZ should pay tax on the cost of the material instead of the resale price.

We are asking the Department of Revenue to rule as to the classification of ABC as a construction contractor or, as is the bulk of our business, a retailer of material handling equipment.

Both XYZ and ABC anxiously await your ruling.

If further information is required, please feel free to contact me.

For general information purposes, the Retailers' Occupation Tax imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is the transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See 86 Ill. Adm. Code 130.101 and 86 Ill. Adm. Code 130.201.

Please refer to 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075 regarding the tax liabilities of contractors in the State of Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

Contractors incur Retailers' Occupation Tax upon the sale of items that are not permanently affixed to real estate. Their customers owe a corresponding Use Tax liability on such purchases.

The Department is unable to provide specific guidance with the information you have provided, however, for general information purposes we hope the following information is helpful in making the determination on the appropriate tax liabilities in your particular case. The Department looks to the facts of each case to determine whether the property was intended to remain tangible personal property or become affixed as real estate when reviewing such situations.

The inquiry into certain tangible personal property remaining tangible personal property or becoming affixed to realty is extremely fact dependent. Bolting items to the concrete floor or hardwiring items to an electrical box and connecting to plumbing fixtures would generally indicate an intent that the items be permanently affixed to the real estate. However, the Department has examined similar facts and concluded differently based upon additional evidence that it was the intent of the purchaser that the entire system be replaced and traded in for a new system every 5 years.

Your letter indicates that the bolting of the racks to the flooring is for stability purposes when installing the racks. Further, you indicate that it is not uncommon for the racks to be unassembled and moved, or sold as used equipment. Again, the Department would look to the intent of the parties when such racks were installed. We are without sufficient information to make a determination regarding the intent of the transaction for a specific ruling herein. If it is the intent of the purchaser to incorporate the racks into the real estate permanently, then your company, as contractor, would incur Use Tax liability on the cost price the tangible personal property. If the intent of purchase was not to permanently install the racks, then your company, as contractor, would incur Retailers' Occupation

Tax upon the sale of racks that are not permanently affixed to the real estate, and your customers would owe a corresponding Use Tax liability on such purchases.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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